



**DEPARTMENT OF CONSUMER AFFAIRS
COURT REPORTERS BOARD OF CALIFORNIA
MINUTES OF OPEN SESSION
FEBRUARY 5, 2008**

CALL TO ORDER

Ms. Toni O'Neill, Chair, called the meeting to order at 4:05 p.m. at the Department of Consumer Affairs, Mendocino Room, 1625 North Market Boulevard, in Sacramento, California.

ROLL CALL

Board Members Present:

Toni O'Neill, CSR, Chair
Greg Finch, Public Member, Vice Chair
Lori Gualco, Public Member
Elizabeth Lasensky, Public Member

Staff Members Present:

David E. Brown, Executive Officer
Dianne Dobbs, Staff Legal Counsel
Yvonne Fenner, Staff Services Analyst

A quorum was established and the meeting continued.

MINUTES OF THE NOVEMBER 30, 2007 MEETING

Ms. O'Neill asked for corrections to the November 30, 2007 meeting minutes.

Ms. Lasensky pointed out on Page 9, the top sentence is missing the word "of" and should read: Mr. Brown provided a copy of an interview.

Mr. Finch moved to approve the minutes as corrected. Ms. Gualco seconded; **MOTION CARRIED.**

Mr. Brown noted that in the minutes it said the Board made a motion to have a live CSR report the Board meetings. He reported that staff is working toward that, but that there is a contract process that takes approximately two to three months to complete and that was the reason why there isn't a CSR reporting that particular meeting.

BOARD MEMBER REPORT OF APPEARANCES

Ms. O'Neill reported it's been a rather quiet period but that she has had meetings with Mr. Brown. She noted some upcoming events the Board will be covering.

Mr. Finch reported meeting with David and also chairing the Firm Owner Task Force meeting.

Ms. Lasensky noted she would be attending the upcoming DRA convention as well as the mandatory Board member training.

Ms. Gualco reported she too would be participating in the new Board member training.

BACKUP AUDIO MEDIA (BAM) TASK FORCE UPDATE

Ms. O'Neill directed the Board to page 15 for background on the issue and noted she has appointed a committee made up of Debby Steinman, Toni Pulone, Bill Greenley and Judy Gillespie. She reported that she will serve as chair and that the first meeting will be February 28, 2008, in Sacramento. She said the basic task will be to determine whether or not to recommend that the Board set guidelines and clarified that the task force would not be looking at setting regulations at this point.

EXECUTIVE OFFICER REPORT

Mr. Brown reminded the Board that at the last meeting it had adopted regulatory language for the rulemaking file on its fee regulations and noted the schedule for that is listed in the packet (on page 17). He pointed out the regulatory hearing date is April 15th in Sacramento and noted written comments will be accepted. Comments will be assembled and provided to the Board for review at the May meeting. There is an additional review period after that of approximately 120 days, assuming any issues raised in the comments can be resolved internally.

A draft of the newsletter is expected within the week, followed by final review and edits and an expectation of having it mailed by the end of the month. It is mailed to all licensees in good standing, attorney associations in California, and schools. It's also available in the office and posted on the website.

The status of the remaining goals from the strategic plan is noted on page 19 of the packet. Mr. Brown noted there will be further updates to some goals in the soon-to-be-published newsletter and that some goals were pending based on what comes out of the BAM task force. He acknowledged staff still owes the associations information on the MCLE project. A new strategic planning session is planned for March 28th and 29th in Berkeley to take advantage of the new board members' expertise and to develop new vision and goals for the next few years.

Updated budget reports were distributed, current as of December 2007. Mr. Brown noted the yellow highlighted areas have some room to come up with more accurate figures for the Budget Office. He explained that the Budget Office takes the first six months' expenses and does a straight-line projection to the end of the year and does not take into account anything that has changed to reduce those projections. He gave an example of the first line where the Budget Office had projected based on filling an open staff position at a journeyman level, but it was able to be filled by an entry-level person, a savings for which no adjustments have been made. He noted the bottom line is there are sufficient funds to get through the rest of the year, although it's not reflected on the report. An updated report is expected for the next meeting.

Computer-based testing is still on schedule for implementing the written portion of the test on or after July 1st, 2008. He noted that the topic is brought up repetitively to try to avoid any surprises to the student community. The March exam will be the last two-day exam. After July the on-site exam will consist only of the dictation portion and will be one day. Bonnie Comstock, program manager of the court reporting program at the Argonaut school in Sacramento, commented that she expected the separation of the two portions of the exam would be really good for the candidates, that their anxiety level would be a lot less as they could focus on one test at a time.

Mr. Brown introduced Yvonne Fenner as the new staff analyst, noting she is a CSR and firm owner in Sacramento and brings a great deal of expertise to the Board staff. He noted it was his belief that she is the first licensee to work at the Board, which will give the staff some additional insight into how things operate from the standpoint of a CSR. In response to Ms. Gualco's question, he clarified that it was a permanent half-time position.

CONTINUING EDUCATION – UPDATE ON PROPOSED LEGISLATION

Ms. O'Neill noted that Ms. Fenner had worked on this issue as a Board member and has continued with it as staff and asked for an update. Ms. Fenner stated there was good news and asked Mr. Jim Cassie of Capitol Strategies Group, lobbyist for CCRA, to report. Mr. Cassie announced that Assemblywoman Betty Karnette of Long Beach has agreed to carry the bill. He noted that she's considering running for Superintendent of Schools, so it fits well into her education campaign. He briefly outlined the schedule, noting that after it is passed the Board can then adopt the appropriate standards through the regulatory process. Ms. Fenner noted that the Board has been trying for many years to have continuing mandatory education and expressed encouragement that it appeared to finally be coming to fruition.

Mr. Matthew Spivek, a court reporter from San Francisco, questioned how existing requirements for continuing education for national certifications would work within what is contemplated for California licensure. Ms. Fenner clarified that the proposed language merely sets in place a requirement for CE as a condition of license renewal and that after the law is in place, then the regulatory process would have to be gone through to develop the specifics regarding the number of hours, for example. She stated it was not contemplated that the CRB would be requiring hours in addition to what reporters are already doing under national certification or AOC requirements.

Ms. Comstock asked if CSRs who were not currently reporting would need to fulfill the CE requirements for license renewal, and Ms. Fenner answered that they would unless their license was on an inactive status.

Ms. O'Neill noted that the regulatory process is a lengthy one and there will be ample opportunity for public comment and input. She noted that the earliest the bill could become effective would be January 1, 2009, and then the regulatory process would take at least a year after that, so 2010 to 2011 would be a realistic implementation date.

LEGISLATIVE UPDATE

AB582: Ms. O'Neill reported that the status of AB582 has not changed and that we are continuing to track it. She noted that because of the current economic climate, little change is expected.

RESULTS OF FIRM (BUSINESSES) TASK FORCE

Mr. Finch, Task Force Chair, referred the Board to page 35 for the full minutes of the meeting, but briefly stated that the first issue was to identify where the consumer was harmed in any way by not having firms of whatever business type registered or being able to be regulated by the CRB. The task force concluded after hearing the examples that there was harm to the consumer. Four options were presented for consideration: Statutes from Nevada, Texas, Hawaii and then language proposed by DRA. The language from DRA was ultimately adopted by the Task Force, recommending the Board change 8046 as follows:

A corporation, firm, partnership, or sole proprietorship providing or arranging for shorthand reporting services shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or

hereafter in effect which pertains to shorthand reporters or shorthand reporting. In conducting its practice it shall observe and be bound by such statutes, rules and regulations to the same extent as a person holding a license under this chapter.

Mr. Brown reported that after the Task Force meeting, he met with Senate B&P and Board legal counsel. Based on those meetings, it appears 8046 may not be the appropriate spot for the proposed language. He recommended that if the Board were to adopt the recommendation from the Task Force, that a new section be created under 8016 of the Business and Professions Code.

Ms. Sheri Turner from CCRA expressed concern about the proposed language and submitted alternative language. It is their position that the most expeditious way to accomplish the firm oversight is via having a managing CSR designated to be held responsible for the actions and inactions of the firm and could be disciplined the same way the individual licensees are, ensuring that everyone is held to the same standards.

Mr. Dan Feldhaus, task force member and firm owner in Sacramento, stated that he believes the proposed language change to 8046 bypasses having actual firm registration.

Mr. Ed Howard, DRA's lobbyist, noted that there are in fact existing remedies in current law that provide for Board oversight over corporate entities under 8027.5, 8019 and 8046 and that this is really just an attempt to plug the loophole that is enjoyed by other business entities, sort of a good first step before the Legislature. He stated that DRA supports the strongest level of firm registration possible, but noted that what seemed to carry the day for the Task Force was before we do that, let's try to plug the hole and do it the way the Legislature has already outlined. He noted that once it's in place we will test that and if it proves inadequate, it can be changed at a later date.

Ms. O'Neill agreed that her understanding from attending the Task Force meeting was that it was better to take small steps to see if the problem could be corrected with the least amount of change, rather than going straight to a more radical change or bigger fight.

Ms. Lasensky commented that while she has no experience in this matter, from the outside looking in it seems like a tremendous amount of responsibility to be placing on one person within a corporation if we were to go the managing CSR route.

Ms. Gualco noted that there are many professions where there is such a system, including the real estate industry as well as many law firms.

Mr. Dennis Peyton from Stockton agreed that someone from the firm should be responsible, but that ultimately the firm should bear the responsibility and not have a fall guy that lets a firm out of their conduct.

Mr. Spivek asked if the Board contemplated having very large firms where court reporting is possibly only a small percentage of their overall business be held accountable as well.

Mr. Brown answered by saying that currently the Board is tasked with oversight of individual CSRs and shorthand corporations, leaving all other forms of business entities free to operate outside California law governing court reporting, and he cited a few examples of problems. He reiterated that the Board is not asking for registration or licensing of firms, we're just simply saying if you're providing court reporting services in California, you need to be held to the same expectations, standards, laws and rules that the individual CSR is held to.

Mr. Howard noted that the rules of the game are the same, but the remedies are different. He agreed there may be a reluctance to holding an individual responsible for a firm's actions and questions the effectiveness of the threat of action against that individual's license.

Ms. Turner noted that she agrees that even if everyone is held to the same standard, the remedy is not the same and this goes to the very heart of their position. If the Board takes away a license, they're shutting down that person's right to do business and the same ability to shut down a firm's business should be available to the Board.

Mr. Finch noted that with the growth in the industry of very large firms, reporters are losing their control over the transcript and noted it's important to hold the firm responsible if they are the ones making the decisions affecting the final disposition, i.e. reformatting. He also noted that a very large firm will not be deterred by an action against their managing CSR. They'll simply find another CSR to fill the position.

Ms. Turner reiterated the inequity of taking an individual's license versus citing and fining a firm.

Mr. Finch noted the importance of coming up with a remedy that will likely get somewhere. He distinguished between taking the easy way out because it's the easy way out versus pursuing a path that leads to the best chance of success to get us where we want to go.

Mr. Brown concurred that the ultimate way to handle the differences would be to register and license firms, period. He contrasted the current proposal as the least change to business with the next step up, implementing a managing CSR, and then the final step of actual firm licensure or registration.

Ms. Turner ventured that we all agree something is better than nothing.

Ms. Gualco spoke in favor of the managing CSR concept.

Mr. Spivek noted that it still gives an unfair advantage to the very large firms who will be able to replace the managing CSR as needed.

Mr. Howard noted that the gold standard, the real level playing field, is as Mr. Brown noted, the registration or licensure of firms, but the question is are the benefits of licensing firms or implementing a managing CSR worth the risks involved in getting such a concept passed. He stated that his experience from working at the Capitol is that the Legislature wants to know why the current situation can't be fixed before they will entertain the idea of something new.

Ms. O'Neill stated that past experience with the legislative process would encourage her to take smaller, more conservative steps before bolder, more dramatic changes.

Ms. Turner expressed the hope that the majority of court reporters, who operate individually, won't see the Board's action as an inequity of punishment.

Mr. Finch expressed the hope that they would understand the Board is moving forward with the best interests of the consumers in mind and will understand the Board's attempt to find some equity in the situation.

In response to a question about the Legislature granting the Board the ability to capture complaints in order to establish a need for firm registration, Mr. Brown gave more detail on the history and noted that since that time the Professional Code of Conduct has been enacted, which has inadvertently created some inequities that have resulted in complaints to the Board.

Mr. Finch moved to approve the language recommended by the Task Force as noted above without regard to the section in which it should be placed. Ms. Gualco seconded; **MOTION CARRIED.**

A discussion ensued regarding the merits of trying to get something into the current session this late in the game. Mr. Howard suggested perhaps Assemblywoman Karnette may include it in the continuing education bill. Mr. Cassie agreed that it would be good to go forward during the next few weeks to find an author but expressed concern that the continuing education bill might not be the right vehicle. Staff to pursue author.

GOVERNOR SCHWARZENEGGER ANNOUNCES ACTION TO COMBAT INCREASED UNEMPLOYMENT

Ms. O’Neill introduced this as an information item thrown out to the associations. In an effort to boost the economy through a larger workforce, the Governor has asked the various boards to ensure that they’re doing all they can to get licensees working as quickly as possible. In following the intent of this direction, Ms. O’Neill brought up the topic of licensing out-of-state reporters, provisional licenses, etc., as outlined on page 45. She asked the associations to take this back to their boards and give the Board a memo regarding their position on any of those proposals. A brief discussion of other industries’ practices ensued.

Ms. Gualco offered her opinion that slumping economy or not, let’s not lower the bar. It is her view that the Board should require out-of-state people to have the same skills we currently require of all California CSRs.

PUBLIC COMMENT

(None.)

FUTURE MEETING DATES

Next meeting is March 28 in Berkeley in the morning, followed by two half-day strategic planning sessions. Mr. Brown asked the Board if they were interested in Saturday meetings. The answer was an emphatic no. The next meeting after that is May 8 in Ontario. Meetings further out than that are subject to the new exam site contracts which are not yet in place, but there is a tentative July 11th LA date.

Other dates of interest noted were February 15-17, DRA annual convention in Sonoma; March 14-15, CSR exam LAX; April 19, COCRA annual convention in San Francisco.

ADJOURNMENT

Ms. O’Neill adjourned the meeting at 5:28 p.m.

_____ TONI O’NEILL, Board Chair	_____ DATE	_____ DAVID E. BROWN, Executive Officer	_____ DATE
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